

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD PHILLIP MCKENNA,
Plaintiff,
v.
T. CISNEROS, et al.,
Defendants.

No. 2:22-cv-01294-KJM-CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 25, 2022, the Magistrate Judge filed an order and findings and recommendations. F&R, ECF No. 26. The Magistrate Judge granted plaintiff's motion to proceed in forma pauperis, dismissed the complaint with leave to amend under the screening provisions of 28 U.S.C. § 1915A, imposed filing and page limit restrictions on further pleadings, and permitted plaintiff to add claims or defenses to his amended complaint. *Id.* at 11–12. The Magistrate Judge also recommended denying plaintiff's motions for injunctive relief without prejudice. *Id.* at 12. The order and findings and recommendations were served on plaintiff and contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations, ECF No. 31,

1 and two motions for emergency injunctive relief, ECF Nos. 29, 35. He has also requested
2 reconsideration of this court's and the Magistrate Judge's orders denying his request to appoint
3 counsel. *See* Mots., ECF Nos. 22, 30; Orders, ECF Nos. 15, 25.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
5 court has conducted a *de novo* review of the pending motions for injunctive relief and related
6 filings. The court agrees with the Magistrate Judge that plaintiff has not shown he is "likely to
7 succeed on the merits" and has not raised "serious questions going to the merits." F&Rs at 9–10
8 (first quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009), then quoting *All. for*
9 *the Wild Rockies v. Cottress*, 632 F.3d 1127, 1131 (9th Cir. 2011)). That shortcoming suffices to
10 show the pending motions must be denied. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20
11 (2008). The court need not and does not consider whether a federal court may restrain or enjoin a
12 non-appearing defendant in these circumstances. *See* F&Rs at 10 ("At this stage in the
13 proceedings, injunctive relief is also premature since no defendant has been served."); *but cf.*
14 Fed. R. Civ. P. 65 (b)(1) (establishing procedure for issuing temporary restraining orders without
15 notice).

16 Plaintiff does not expressly request reconsideration of the Magistrate Judge's order
17 limiting his filings and motions. If he intended to make that request, the court would deny it. The
18 Magistrate Judge's orders were not "clearly erroneous" or "contrary to law." Fed. R. Civ. P.
19 72(a). The filings at ECF Nos. 29 and 35 are therefore stricken as unauthorized.

20 The court also denies plaintiff's motions to reconsider its previous orders on the
21 appointment of counsel. *See Leslie Salt Co. v. United States*, 55 F.3d 1388, 1393 (9th Cir. 1995)
22 ("[T]he court may reconsider previously decided questions in cases in which there has been an
23 intervening change of controlling authority, new evidence has surfaced, or the previous
24 disposition was clearly erroneous and would work a manifest injustice.").

25 Accordingly, IT IS HEREBY ORDERED that:

26 1. The findings and recommendations filed October 25, 2022 (ECF No. 26), are adopted
27 in part as described above;

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2. Plaintiff's motions for a preliminary injunction/temporary restraining order and related relief (ECF Nos. 3, 16-17, 21) are denied without prejudice;

3. The filings at ECF Nos. 29 and 35 are stricken as unauthorized;

4. The motions to reconsider at ECF Nos. 22 and 30 are denied; and

4. This matter is referred back to the assigned magistrate judge for all further pretrial proceedings, including plaintiff's motions for extensions of time and page limits at ECF Nos. 32 and 34.

DATED: December 14, 2022.


CHIEF UNITED STATES DISTRICT JUDGE